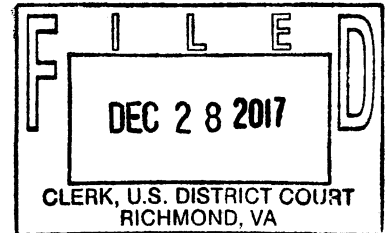


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division



UNITED STATES OF AMERICA,

v.

KALVIN MARSHALL,

Petitioner.

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Criminal Action No. 3:02CR225-HEH

**MEMORANDUM OPINION**  
**(Denying Rule 59(e) Motion)**

Kalvin Marshall, a federal inmate proceeding with counsel, submitted a successive motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence (“§ 2255 Motion,” ECF No. 194). Marshall argued that in light of the Supreme Court’s ruling in *Johnson v. United States*, 135 S. Ct. 2551 (2015), his guidelines sentence is unconstitutional. (*Id.* at 3.) By Memorandum Opinion and Order entered on November 1, 2017, the Court denied the § 2255 Motion as procedurally barred pursuant to 28 U.S.C. § 2255(h)(2) and untimely pursuant to 28 U.S.C. § 2255(f)(3). (ECF Nos. 206, 207.) On November 27, 2017, the Court received Marshall request to alter or amend that judgment pursuant to Federal Rule of Civil Procedure 59(e).

The United States Court of Appeals for the Fourth Circuit has recognized three grounds for relief under Rule 59(e): “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing *Weyerhaeuser Corp. v. Koppers Co.*, 771 F. Supp. 1406,

1419 (D. Md. 1991); *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990)).

Although Marshall fails to identify on what ground he seeks relief, he apparently argues that Rule 59(e) relief should be granted to correct an error of law or to prevent manifest injustice. Marshall, however, fails to demonstrate that the Court committed an error of law or that vacating the November 1, 2017 Memorandum Opinion and Order is necessary to prevent an injustice. Accordingly, the Rule 59(e) Motion (ECF No. 208) will be denied. The Court will deny a certificate of appealability.

An appropriate Order shall issue.



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Henry E. Hudson  
United States District Judge

Date: Dec. 28, 2017  
Richmond, Virginia